

REMARKS/ARGUMENTS

The preceding amendments and following remarks are submitted in response to the non-final Office Action mailed January 27, 2004, setting a three-month shortened statutory period for response ending April 27, 2004. Reconsideration, examination and allowance of all pending claims are respectfully requested.

35 U.S.C. § 102 Rejections

On page 2 of the Office Action, the Examiner rejected claims 31-36 under 35 U.S.C. § 102(b) as being anticipated by *Reger et al.* (U.S. Patent No. 5,108,419). With respect to claim 31, the Examiner states that *Reger et al.* disclose an embolic capturing system including an elongated member (56) having a proximal end and a distal end, a flexible emboli capturing device (54) having a distal end and a proximally opening mouth, and a frame (58) disposed on the mouth. The Examiner further states that the distal end of the elongated member (56) extends distally of the flexible emboli capturing device (54), and that the flexible emboli capturing device (54) extends proximally over a portion of the elongated member (56) to form the proximally opening mouth.

In response to this rejection, Applicants have amended claim 31 to now recite:

31. (Currently Amended) An emboli capturing system for capturing emboli in a body lumen, comprising:

an elongate member having a proximal end and a distal end;
a flexible emboli capturing device having a distal end, a proximal end, and a proximally opening mouth, the distal end of the emboli capturing device mounted proximate the distal end of the elongate member, the distal end of the elongate member extending distally of the flexible emboli capturing device, the flexible emboli capturing device extending proximally over a portion of the elongate member including a filter portion extending proximally from the mounted distal end of the flexible emboli capturing device to the proximal end thereof to form the proximally opening mouth; and

a hoop-shaped wire frame disposed on the proximally opening mouth of the flexible emboli capturing device.

As can be seen above, claim 31 now recites that the flexible emboli capturing device includes a filter portion extending proximally from a mounted distal end of the flexible emboli capturing device to a proximal end thereof to form the proximally opening mouth.

Unlike the emboli capturing system recited in claim 31, the filter device 10 disclosed by *Reger et al.* does not disclose a filter portion extending proximally from a mounted distal end of the flexible emboli capturing device to a proximal end thereof. In *Reger et al.*, the only filter portion that appears to extend proximally from the mounted distal end of the filter device (10) is the distal-most filter element (40) located adjacent the tip portion (38) of the guidewire (36). As can be seen in Figure 1, however, this filter element (40) does not extend proximally to the proximal end of the filter device (10), but instead terminates at a location distally of the next filter element (42). Since *Reger et al.* do not disclose a filter portion extending proximally from a mounted distal end of the flexible emboli capturing device to a proximal end thereof, Applicants respectfully assert that claim 31 is now in condition for allowance.

Because independent claim 31 is now in condition for allowance, Applicants respectfully assert that dependent claims 32-36 are also allowable for the reasons stated above, and since they add other significant elements to distinguish them from the cited prior art.

On page 3 of the Office Action, the Examiner further rejected claims 31-36 under 35 U.S.C. § 102(e) as being anticipated by *Barbut et al.* (U.S. Patent No. 5,769,816). With respect to claim 31, the Examiner states that *Barbut et al.* disclose an emboli capturing system including an elongated member (50) having a proximal end and a distal

end, a flexible emboli capturing device (40) having a distal end and a proximally opening mouth, and a frame (30) disposed on the mouth. The Examiner further states that the distal end of the elongated member (50) extends distally of the flexible emboli capturing device (40), and that the flexible emboli capturing device (40) extends proximally over a portion of the elongated member (50) to form a proximally opening mouth.

In response to this rejection, Applicants have amended claim 31 to also recite that the emboli capturing system includes a hoop-shaped wire frame disposed on the proximally opening mouth of the flexible emboli capturing device. Based on this amendment, Applicants respectfully assert that claims 31-36 are also patentable over *Barbut et al.* reference, as they include additional patentable elements.

With this Amendment, Applicants have also added newly presented claims 37-42. Applicants respectfully assert that these claims are also patentable over the cited prior art.

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Amendment dated March 11, 2004
Reply to Office Action of January 27, 2004

In view of the foregoing, Applicants respectfully assert that all pending claims are in condition for allowance. Reexamination and reconsideration are respectfully requested. If the Examiner would like to discuss the Application or its examination, please contact the undersigned at (612) 677-9050.

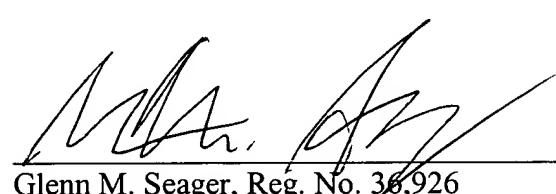
Respectfully submitted,

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By their Attorney,

Date:

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